

If an administrative law judge or presiding officer has been assigned to hold a hearing regarding an application for determination, the administrative law judge or presiding officer shall prepare a proposed decision of determination. The proposed decision of determination shall be reviewed by the commissioner who may uphold or modify the proposed decision of determination and shall then sign a final decision of determination. The final decision of determination shall constitute final agency action for the purposes of Iowa Code chapter 17A.

8.303(6) *Request for information.* Form DCI-150, "Request for Registry Information," shall be used by a member of the public to request information about whether a specific person is registered with the Iowa sex offender registry. A person requesting information about whether a specific individual is registered with the Iowa sex offender registry shall submit a completed copy of Form DCI-150 to a sheriff or police department. A separate form shall be submitted for each person about whom information is being requested.

8.303(7) *Confidential background investigation.* A government agency conducting a confidential background investigation shall submit a completed Form DCI-151 to the division of criminal investigation to request information regarding the individual about whom the background investigation is being conducted.

8.303(8) *Affirmative public notification.*

a. Form DCI-152, "Notice of Intent to Make Affirmative Public Notification," shall be used by the division of criminal investigation to notify a registrant that the division intends to engage in affirmative public notification regarding the registrant in accordance with subrule 8.304(1).

b. Form DCI-153 shall be used by the division of criminal investigation to carry out affirmative public notification regarding a particular registrant in accordance with subrule 8.304(1). Additional information, including, but not limited to, a photograph of the registrant may be attached to Form DCI-153.

8.303(9) *Confidential records.* Completed forms filled out pursuant to rules 8.301(692A) through 8.399 are confidential records that may not be released to the public.

EXCEPTION: Completed copies of Form DCI-150 are public records only if public release of a form is authorized by the person completing the form.

661—8.304(692A) *Release of information.* The purpose of release of information from the Iowa sex offender registry is to afford protection to the public. The procedures specified here are intended to maximize the degree of protection afforded the public from potential risks presented by registrants while ensuring registrants their due process rights.

8.304(1) *Affirmative public notification for public protection.* A criminal or juvenile justice agency may initiate affirmative public notification regarding the identity and location of a specific registrant subsequent to the completion of a risk assessment of the registrant by the division of criminal investigation, the department of corrections, the department of human services, or a juvenile court officer which has resulted in a finding that the registrant is "at risk." A request for confirmation that a risk assessment resulting in classifying the registrant as "at risk" has been completed may be sent to the division of criminal investigation by mail, electronic mail via the Internet to isor@dps.state.ia.us, facsimile transmission or via the Iowa on-line warrants and articles (IOWA) system.

A criminal or juvenile justice agency shall not initiate affirmative public notification regarding an individual who has been convicted of kidnapping or false imprisonment, and the crime did not involve attempted sexual abuse or sexual abuse, and the person has not committed another offense that would require the person to register.

a. Risk assessment. An assessment of the risk presented by a registrant shall be prepared prior to any affirmative public notification regarding that registrant. The assessment of risk for a registrant shall be prepared by the division of criminal investigation for a registrant who has moved to Iowa but is not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; federal parolees or probationers; persons who have been released from a county jail but are not under the supervision of the department of corrections, a judicial district department of correctional services, or the department of human services; and persons who are convicted and released by the courts and are not incarcerated or placed under supervision pursuant to the court's sentencing order. Risk assessments shall be prepared by the department of corrections, juvenile court officers, or the department of human services for registrants as specified in 1999 Iowa Acts, Senate File 294 [1999 Iowa Code Supplement section 692A.13A]. Risk assessments shall be completed following procedures prescribed by the department of corrections.

b. Risk categories. The assessment of risk presented to the community by a registrant shall result in placement of the registrant into one of the following categories: "low risk" or "at risk." "At risk" includes registrants who have been assessed to be a "moderate risk" or "high risk."

All registrants are by virtue of their presence on the registry classified as "low-risk" offenders, unless they are classified as offenders "at risk" on the basis of assessments completed by the division of criminal investigation, department of corrections, department of human services, or a juvenile court officer.

c. Affirmative public notification procedures. The means, method, and scope of release of information shall be based upon the determination of level of risk presented by a registrant. The following forms of notification may be utilized for each level of risk assessed.

(1) Low risk. For a registrant classified as presenting a low risk to the community, notification of the registrant's name, current address, criminal history, and a current photograph of the registrant may be provided to any law enforcement agency likely to encounter the registrant. These shall include, but are not limited to, any county or municipal agency with jurisdiction over the registrant's place of residence, place of employment or school or any other place to which the registrant is known to travel on a frequent basis.

(2) At risk. For a registrant classified as "at risk," the notification described in subparagraph (1) shall be completed. Also, persons likely to encounter the registrant may be notified through the following means. The department shall consult with the county attorney, sheriff, and local law enforcement agencies with jurisdiction in the registrant's place of residence, employment, school attendance, and other locations that the registrant is known to frequent, regarding appropriate forms of affirmative public notification. Form DCI-153 shall be used to carry out affirmative public notification initiated by the division of criminal investigation.

1. Notification of agencies or organizations in the community in which the registrant lives, is employed or attends school, or is known to frequent, where there are potential victims.

2. Personal or written notification of neighbors in the vicinity of the residence of the registrant, the registrant's place of employment or school, or other places the registrant is known to frequent.

3. Releases to media outlets which cover the community or communities in which the registrant resides, is employed or attends school, or is known to frequent including but not limited to the registrant's name and photograph.

4. Distribution of leaflets to residences and businesses in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

5. Posting of notices in public locations in the vicinity of the registrant's residence, place of employment or school, or places the registrant is known to frequent.

(3) Responsibility for affirmative public notification. Affirmative public notification is intended to be a process of cooperation between the department of public safety and local law enforcement agencies with jurisdiction in locations where the registrant resides, is employed, attends school, or is known to frequent.

(4) Any county sheriff or police department shall provide access to the list of all registrants classified as “at risk” within the county in which the sheriff or police department has jurisdiction to any person who requests such a list; however, records of persons protected under 18 U.S.C. § 3521 shall not be disclosed.

(5) Subject to the availability of sufficient funds, the department shall provide electronic access to information from the Iowa sex offender registry regarding registrants who:

1. Commit a criminal offense against a minor, an aggravated offense, sexual exploitation, a sexually violent offense, or another relevant offense on or after July 1, 1999, of this Act and who have been assessed to be a “moderate risk” or “high risk.”

2. Committed an offense prior to July 1, 1999, and who have been assessed to be a “moderate risk” or “high risk” and whose opportunity to request a hearing regarding the assessment of risk has lapsed.

d. Findings—prior notice—right to appeal—affirmative public notification by department.

(1) When a risk assessment has been completed by the division of criminal investigation, the department of corrections, or the department of human services, the agency which conducted the risk assessment shall notify, or cause to be notified, the registrant of the initial finding, by providing to the registrant a completed copy of Form DCI-152 and of the risk assessment. Procedures for notifying a registrant of the results of a risk assessment and providing for appeals thereof shall be subject to the rules of the agency conducting the risk assessment. Copies of the risk assessment and related documents, including any appeals and documentation of the results of appeals, shall be provided to the division of criminal investigation. When a risk assessment has been completed by a juvenile court officer, the juvenile court officer shall notify the division of criminal investigation of the results of the risk assessment and provide a copy of the risk assessment to the division of criminal investigation.

When a risk assessment has been completed by the division of criminal investigation or the division of criminal investigation has received a completed risk assessment from a juvenile court officer, notice shall be given by the division of criminal investigation to the registrant by personal service or by certified mail, return receipt requested, 14 days prior to the commencement of any affirmative public notification, unless it is impracticable to give timely notice. No additional notice is required. Notice is deemed provided if the registrant refuses delivery of certified mail or if certified mail is undeliverable because the registrant has not complied with registry requirements to provide a current address. The notice shall contain the following information:

1. A copy of the completed risk assessment;
2. A description of the scope of affirmative public notification which may result from the risk assessment;
3. That unless application is made for a hearing on or before the date mentioned in the notice, affirmative public notification may take place at any time thereafter while the person remains a registrant;
4. That the offender may make application for a hearing by filing a written request for a hearing and mailing or serving it on the department at an address prescribed on the notice so it is received on or by the date mentioned in the notice;
5. That if application is made and received by the department by 4:30 p.m. on or by the date mentioned in the notice, there will be no affirmative public notification until and unless the result of the risk assessment is affirmed, or is modified, through the hearing process.

(2) A registrant who has received notice from the division of criminal investigation that a risk assessment has been completed by the division of criminal investigation or a juvenile court officer may appeal the result of the risk assessment in writing to the administrative services division of the department of public safety within 14 days of the date on which the notice is sent to the registrant by the division of criminal investigation.

(3) Affirmative public notification shall not proceed until at least 14 days after notice of the result of the risk assessment has been mailed or delivered to the registrant.

EXCEPTION: If the director of the division of criminal investigation finds that the registrant presents an immediate threat to the safety of the public, affirmative public notification may proceed at the same time as notice is sent to the registrant. In such a case, the notice shall inform the registrant that affirmative public notification may proceed immediately, based upon the finding that the registrant presents an immediate threat to the safety of the public.

(4) If the department does not receive a written application for a hearing within the time guidelines set forth above, the department may undertake affirmative public notification if the result of the risk assessment was that the registrant is "at risk."

(5) When the department receives an application for a hearing, the department shall refer the matter to an administrative law judge or a presiding officer pursuant to Iowa Code section 17A.11. The department shall submit all written documents supporting the initial finding to the presiding officer with the application for hearing. The administrative law judge or presiding officer shall set a hearing within seven days after receiving the application for hearing from the department and provide notice to the parties along with the documentary evidence received from the department. The administrative law judge or presiding officer shall set the hearing as expeditiously as possible in recognition of the public protection interests of Iowa Code chapter 692A.

(6) All documents relating to the hearing shall be confidential prior to, during, and after the hearing. The hearing itself shall be conducted *in camera*.

(7) Rule 661—10.321(17A), which governs introduction and consideration of evidence, shall apply to proceedings under this rule.

(8) The department shall have the burden of proof by a preponderance of the evidence to support the result of the risk assessment.

(9) After hearing the evidence and argument of the parties, the administrative law judge or presiding officer shall issue a written order affirming, reversing, or modifying the result of the risk assessment. The order shall contain concise findings of fact and conclusions of law. A copy of the order shall be promptly mailed to each party. The order itself shall remain confidential, in accordance with Iowa Code section 692A.13.

(10) The registrant or the director of the division of criminal investigation may appeal the administrative law judge's or presiding officer's order to the commissioner of public safety. Appeal must be served in writing within 14 days from the date of the order. If the order is not appealed within the 14-day time period, it shall be considered a final decision, and the department or other criminal or juvenile justice agency may undertake affirmative public notification, if warranted by the result of the risk assessment.

(11) The commissioner shall consider an appeal on the record made before the administrative law judge or presiding officer. The commissioner shall not consider any additional facts on appeal. The commissioner may, at the commissioner's discretion, request written briefs or oral argument in an appeal. The commissioner shall issue a written decision affirming, reversing, or modifying the order of the presiding officer. A copy of the decision shall be promptly mailed to each party. The decision, and all related information, shall remain confidential, in accordance with Iowa Code section 692A.13. The commissioner's decision shall constitute final agency action for purposes of Iowa Code section 17A.19.

(12) Subsequent affirmative public notification. For a registrant who has been assessed as “at risk” and who has been notified of the result of the risk assessment and the possibility of affirmative public notification, a criminal or juvenile justice agency may initiate affirmative public notification in any area in which the registrant resides, is employed, attends school, or frequents subsequent to the initial notification to the registrant.

e. Affirmative public notification initiated by other criminal or juvenile justice agency. A criminal or juvenile justice agency may initiate affirmative public notification with regard to a registrant subsequent to the completion by the division of criminal investigation, the department of corrections, the department of human services, or a juvenile court officer of a risk assessment finding that the registrant is “at risk.” Prior to initiating affirmative public notification, the agency initiating it shall provide notice to the registrant of the agency’s decision to initiate affirmative public notification, of the intended scope and manner of affirmative public notification, and of the registrant’s right to contest the decision. A copy of the notice shall be submitted to the division of criminal investigation at the same time as it is transmitted to the registrant. The notice shall contain instructions to the registrant as to the procedures for contesting the decision and the time allowed to do so. Affirmative public notification shall not proceed until the time allowed for contesting the decision has expired or, if the decision is contested, until the decision has been upheld. Any written or published form of affirmative public notification shall prominently display the identity of the agency initiating the notification.

Any criminal or juvenile justice agency initiating affirmative public notification regarding any registrant is authorized to request assistance in carrying out affirmative public notification from other law enforcement agencies with jurisdiction in areas in the vicinity of the registrant’s residence, place of employment or school, or other places which the registrant is known to frequent.

8.304(2) *Release of information in response to individual request.* A sheriff or police department that receives a completed Form DCI-150 shall inquire of the division of criminal investigation as to whether the person about whom information was requested is registered with the Iowa sex offender registry. If the division of criminal investigation notifies the sheriff or police department that the person about whom inquiry is made is not on the registry, the sheriff or police department shall so notify the person who submitted the request. If the division of criminal investigation notifies the sheriff or police department that the subject about whom inquiry was made is a registrant with the Iowa sex offender registry, the sheriff or police department shall notify the person making the inquiry that the subject about whom the inquiry was made is a registrant and shall provide the requester with the following information: name of registrant, address of registrant, age of registrant, gender of registrant, and physical description of registrant.

8.304(3) *Release of information for confidential background investigations.* The division of criminal investigation may release additional information regarding a registrant to personnel of criminal justice agencies or to personnel of government agencies conducting confidential background investigations.

8.304(4) *Release of information for bona-fide research.* Information from the Iowa sex offender registry may be released to persons conducting bona-fide research. A person conducting bona-fide research may request access to information from the Iowa sex offender registry by submitting a completed Form DCI-155 to the division of criminal investigation. Information identifying persons who have requested information about registrants using Form DCI-150 shall not be released to researchers unless permission has been obtained from each person who would be identified.

8.304(5) *Submission of information to the National Sex Offender Registry.* The division shall submit sex offender registry data as required to the National Sex Offender Registry of the Federal Bureau of Investigation.

8.304(6) *Single contact repository.* The division shall perform a search of the sex offender registry on an individual based on a request submitted from an authorized agency and shall provide the authorized agency the results of the search in accordance with Iowa Code sections 135C.33 and 692A.13(8). The information provided from the registry shall be limited to whether the identified person is required to register.

661—8.305(692A) Expungement of records.

8.305(1) *Expungement upon reversal of conviction.* The division of criminal investigation shall expunge the registration of any registrant if the conviction which forms the basis for the registrant's being required to register is reversed upon receipt of a certified copy of the court order reversing the conviction, providing that the person has been convicted of no other offense which would require registration.

8.305(2) *Expungement upon expiration of registration period.* The division of criminal investigation shall expunge a registrant's registration upon expiration of the period during which the registrant is required to register, provided that the registrant has not subsequently been convicted of an offense that would require registration.

661—8.306 to 8.399 Reserved.

These rules are intended to implement Iowa Code chapter 692A.

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